



WEB COPY



*Crl.M.P.No.19905 of 2023
in Crl.A.No.268 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.06.2024
Pronounced on	03.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.M.P.No.19905 of 2023
in
Crl.A.No.268 of 2023

Muniyappa

...Petitioner

Vs.

The State rep. by
The Inspector of Police,
Perundurai Police Station,
Erode District.

...Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code to suspend the sentence of imprisonment imposed in the judgment dated 28.12.2022 made in S.C.No.94 of 2019 on the file of the learned Sessions Court, Mahalir Neethi Mandram, Fast Track Mahila Court, Erode and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.N.Manoharan



*Crl.M.P.No.19905 of 2023
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For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

M.S.RAMESH,J.

Heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor, for the respondent.

2. The petitioner/appellant has been found guilty for having committed the offence under Section 302 of the Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for life and fine of Rs.5,000/-, in default to undergo simple imprisonment for three months, through the judgment of the Sessions Court, Mahalir Neethi Mandram, (Fast Track Mahila Court), Erode, in S.C.No.94/2019, dated 28.12.2022. In the present miscellaneous petition, the petitioner seeks for suspension of his sentence.

3. The brief facts of the prosecution's case are that the deceased



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WEB COPY

Nivethitha, had married the petitioner in the year 2018 and lived in a rented house at Erode. Suspecting the fidelity of his wife that she was having illicit intimacy, they frequently quarreled. On 15.04.2019 at 10.00 P.M., the petitioner had witnessed one unknown male person in the company of his wife and enraged with her conduct, he decided to do her away. Accordingly, he had taken his wife in a motorcycle by telling her that he would take her to her parents' house. While riding, at about 12.30 A.M. of 16.04.2019, he had attacked his wife with a knife and beheaded her. He then put her head in a bag and trunk on the tank of his motorcycle. On the way, he was spotted by P.W.2 to P.W.5, who chased him. At that point of time, the bike of the petitioner skid and he fell down, together with the beheaded body. He was then apprehended and handed over to the local Village Administrative Officer (P.W.1). On the complaint (Ex.P.1) given by P.W.1, the Police had registered a case in Crime No.226/2019 for the offence under Sections 364 and 302 IPC. On completion of the investigation, a charge sheet was filed against him for the same offence and during the course of the trial, he was found guilty of the charges.

4. The learned counsel for the petitioner submitted that the



*Crl.M.P.No.19905 of 2023
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evidence of the Village Administrative Officer (P.W.1) is contrary to the evidence of the Investigating Officer (P.W.21) and that it indicates that the complaint of P.W.1 given at 06.00 A.M. was not the first statement, since the Police had gone to the scene of occurrence in the midnight itself, based on the earlier information received by them. He also submitted that the only persons, who are alleged to have captured and detained the petitioner, were P.W.2 to P.W.5, all of whom did not support the case of the prosecution. He further raised doubts about the recovery of the weapon.

5. Per contra, the learned Additional Public Prosecutor submitted that it is a brutal murder, whereby the petitioner had decapitated the body and attempted to conceal the same. He further submitted that the confession given to P.W.1 by the petitioner was in view of the information received from the villagers and since the same was recorded by P.W.1 and later handed over to the Investigating Officer, there is no infirmity in registering the complaint. He also submitted that the recovery was made, based on the confession of the petitioner and hence was proper.



*Crl.M.P.No.19905 of 2023
in Crl.A.No.268 of 2023*

WEB COPY

6. It is the case of the prosecution that P.W.2 to P.W.5 saw the petitioner taking the body of the deceased and they caught hold of the petitioner and handed him over to P.W.1. P.W.2 to P.W.5 did not support the case of the prosecution. Hence, P.W.1's version, who had stated that the accused/petitioner informed him about causing the death of his wife, also becomes doubtful. That apart, P.W.2 to P.W.5 have stated that the Police had come to the scene of occurrence in the middle of the night itself. Apparently, the Police had the first information during the night time itself, but, however, chose to record P.W.1's statement at 06.00 A.M. of 16.04.2019 only. If the complaint (Ex.P.1) is disbelieved, the prosecution would be left out with the last seen theory by P.W.16 and P.W.17 alone. The motive for the occurrence also has not been conclusively established.

7. On a *prima facie* view, these lacunas suggest that the prosecution had not established the chain of circumstances conclusively, which would point out only to the guilt of the petitioner.

8. In view of the *prima facie* case made out by the petitioner and also by taking note of the possibility that the appeal may not be taken up



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for final disposal in the near future, we are inclined to suspend the sentence of the petitioner.

9. Accordingly, the present Criminal Miscellaneous Petition stands **allowed** and the sentence imposed on the petitioner is suspended on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Mahalir Neethi Mandram, (Fast Track Mahila Court), Erode;
- (ii) The petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank passbook and mobile numbers to ensure their identity;
- (iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 A.M., until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.



WEB COPY



*Crl.M.P.No.19905 of 2023
in Crl.A.No.268 of 2023*

[M.S.R.,J.]

[S.M.,J.]

03.07.2024

Index: Yes/No

Speaking order/Non-speaking order

hvk

Note: Issue order copy on 03.07.2024

To

1. The Sessions Judge,
Mahalir Neethi Mandram,
(Fast Track Mahila Court),
Erode.
2. The Inspector of Police,
Perundurai Police Station,
Erode District.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court of Madras.



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Pre-delivery order made in
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